

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: APU	CCRB Case #: 201808324	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 09/28/2018 7:00 PM	Location of Incident: 224 Nagle Avenue; 34th Precinct stationhouse	Precinct: 34	18 Mo. SOL 3/28/2020	EO SOL 11/12/2020	
Date/Time CV Reported Sat, 09/29/2018 9:20 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/09/2018 10:56 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Alexandra Isabelle	07679	956765	034 PCT
2. SGT Douglas Perez	3323	943667	034 PCT
3. DTS Fabio Nunez	872	925839	034 PCT
4. An officer			
5. POM Ismael Perez-Ortiz	14794	962682	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Pedro Figueroa	14953	950409	034 PCT
2. POM Carlos Delrosario	28491	953810	034 PCT
3. POF Tiffany Sanchez	21647	959966	034 PCT
4. POM Joshua Cumberbatch	22517	962339	034 PCT
5. POM Michael Quinones	29678	953282	034 PCT
6. POM Kenneth Quinones	19350	962704	034 PCT
7. POM Patrick Duffy	16912	957557	034 PCT
8. POM Christopher Harrington	16553	964543	034 PCT
9. POM Daniel Wynne	11292	962083	034 PCT
10. DTS Edwin Rodriguez	6696	946173	034 PCT
11. POM Kevin Falconer	2149	954790	034 PCT
12. POM Mohammad Khan	27221	957734	034 PCT
13. POM Isaiah Williams	16677	962168	034 PCT
14. POF Christina Whitehead	06744	957306	034 PCT
15. POM Kevin Santiago	07944	963745	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Alexandra Isabelle	Discourtesy: At 224 Nagle Avenue in Manhattan, Police Officer Alexandra Isabelle spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
B.DTS Fabio Nunez	Force: At 224 Nagle Avenue in Manhattan, Detective Fabio Nunez used a chokehold against § 87(2)(b)	
C.DTS Fabio Nunez	Force: At 224 Nagle Avenue in Manhattan, Detective Fabio Nunez restricted § 87(2)(b)'s breathing.	
D.SGT Douglas Perez	Discourtesy: At 224 Nagle Avenue in Manhattan, Sergeant Douglas Perez spoke discourteously to individuals.	
E.POM Ismael Perez-Ortiz	Discourtesy: At 224 Nagle Avenue in Manhattan, Police Officer Ismael Perez-Ortiz spoke discourteously to an individual.	
F.DTS Fabio Nunez	Abuse: At 224 Nagle Avenue in Manhattan, Detective Fabio Nunez threatened to arrest an individual.	
G. An officer	Abuse: At the 34th Precinct stationhouse, an officer did not obtain medical treatment for § 87(2)(b)	
H. An officer	Discourtesy: At the 34th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On September 29, 2018, § 87(2)(b) filed this complaint with IAB via telephone. It was forwarded to the CCRB on October 9, 2019 via IAB log #2018-38575 (Board Review #01: Intake Log).

At approximately 7:00 p.m. on September 28, 2019, Police Officer Alexandra Isabelle and Police Officer Pedro Figueroa of the 34th Precinct attempted to issue a parking summons to a double-parked vehicle in front of 224 Nagle Avenue in Manhattan. A group of civilian bystanders, including § 87(2)(b) and § 87(2)(b) gathered around the officers to protest their actions. Police Officer Isabelle told § 87(2)(b) “I don’t give a fuck,” and, “You just called me a ‘fucking bitch’” (**Allegation A: Discourtesy – Word, § 87(2)(g)**). Police Officer Isabelle and Police Officer Figueroa called for backup. Several uniformed officers, including Detective Fabio Nunez, Police Officer Ismael Perez-Ortiz and Sergeant Douglas Perez of the 34th Precinct responded to the location. Sergeant Perez directed Detective Nunez to arrest § 87(2)(b). Detective Nunez placed § 87(2)(b) in a chokehold and pushed him to the ground (**Allegation B: Force – Chokehold, § 87(2)(g)**; **Allegation C: Force – Restricted breathing, § 87(2)(g)**). After § 87(2)(b) was arrested, Sergeant Perez stated, “Clear the fucking corner,” and, “Throw him in the fucking van” (**Allegation D: Discourtesy – Word, § 87(2)(g)**). Police Officer Perez-Ortiz told an unidentified civilian, “Everybody’s emotions get high, fucking dumb shit like this happens” (**Allegation E: Discourtesy – Word, § 87(2)(g)**).

§ 87(2)(b) alleged that Detective Nunez threatened to have his father, who was not present, arrested (**Allegation F: Abuse of Authority – Threat of arrest, § 87(2)(g)**). He also alleged that, possibly while he was at the 34th Precinct stationhouse, an officer refused to take him to the hospital (**Allegation G: Abuse of Authority – Refusal to provide medical attention, § 87(2)(g)**) and told him to “cut the bullshit” (**Allegation H: Discourtesy – Word, § 87(2)(g)**).

§ 87(2)(b) and § 87(2)(b) were charged with § 87(2)(b). § 87(2)(b) was also charged with § 87(2)(b) (Board Review #02-03: Arrest Reports). A summons was also issued to a Dodge Charger for double-parking (Board Review #04: Summons).

§ 87(4-b), § 87(2)(g)

The investigation obtained BWC footage from seventeen officers, including Police Officer Isabelle, Detective Nunez, and Sergeant Perez. It is attached in IAs #41-60 (Board Review #05-24: BWC Footage) and summarized in IAs #61 and #73 (Board Review #25-26: BWC Summary). Subclips from this footage has been attached in IAs #161-164 (Board Review #27-30: BWC Subclips).

Findings and Recommendations

Allegation (A) Discourtesy: At 224 Nagle Avenue in Manhattan, Police Officer Alexandra Isabelle spoke discourteously to § 87(2)(b)

Allegation (D) Discourtesy: At 224 Nagle Avenue in Manhattan, Sergeant Douglas Perez spoke discourteously to individuals.

§ 87(2)(b) provided a telephone statement to IAB on September 28, 2018 (Board Review #31: Telephone Statement). The CCRB was unable to obtain sworn statements from § 87(2)(b) or § 87(2)(b) and the individual that Police Officer Perez-Ortiz used profanity towards could not be identified (Board Review #34: Civilian Contact Attempts). Police Officer Figueroa was interviewed at the CCRB on March 21, 2019. Police Officer Isabelle was interviewed at the CCRB on April 9, 2019. Detective Nunez was interviewed at the CCRB on May 8, 2019. Sergeant Perez was interviewed at the CCRB on May 9, 2019. Police Officer Perez-Ortiz was interviewed at the CCRB on June 5, 2019.

§ 87(2)(b) made no mention of Police Officer Isabelle or Sergeant Perez using profanity towards him, or of an officer using profanity towards any other civilians besides himself. None of the officers who were interviewed recalled themselves or any other officers using profanity during the incident.

A subclip from Police Officer Isabelle's BWC footage is attached in IA #161 (Board Review #28: BWC Subclip). It shows Police Officer Isabelle ordering § 87(2)(b) and a group of approximately ten civilian bystanders to step away. At the start of the recording, she tells § 87(2)(b) to back up four times. § 87(2)(b) replies by shouting that an unspecified individual was just released from police custody. He does not move back. Police Officer Isabelle shouts, "I don't give a fuck!" § 87(2)(b) states, "Don't touch me, bitch." Police Officer Isabelle replies, "Get in my face. I don't give a fuck." § 87(2)(b) goes on to refer to Police Officer Isabelle several more times as a "bitch." At 01:15 into the subclip, § 87(2)(b) tells Police Officer Isabelle, "Listen, sweetie..." Police Officer Isabelle then states, "Back up. No, no, you just called me a fucking bitch. I told you to back up. Now back up."

When Police Officer Isabelle was shown this BWC footage, she stated that there was "no reason" why she told § 87(2)(b) "I don't give a fuck." She stated that she told § 87(2)(b) that he "called [her] a fucking bitch" because she was repeating back his own statements towards him.

A subclip from Sergeant Perez's BWC footage is attached in IA #164 (Board Review #30: BWC Subclip). It shows the immediate aftermath of § 87(2)(b)'s arrest. Sergeant Perez directs several officers to load § 87(2)(b) into a vehicle. § 87(2)(b) shouts out to Sergeant Perez to complain that Detective Nunez is being rough with him. Sergeant Perez then tells the escorting officers, "Yo, throw him in the fucking car and get him out of here!" He then turns towards a group of people that includes several uniformed officers and civilians. He shouts, "Clear the fucking corner!"

When Sergeant Perez was shown this BWC footage, he stated he used profanity while ordering officers to place § 87(2)(b) in a police vehicle because there was "a lot of stuff going on"

and because he wanted to emphasize his command. He also stated that his order to “clear the fucking corner” was intended as a command to the officers under his supervision and was not directed at any civilians.

An officer may use profanity towards a civilian while attempting to gain control of a “dynamic situation.” An officer may not use profanity when it is intended solely to insult or belittle a civilian. PD v. Pichardo, DAO-DCT Case #2015-15012 (Board Review #32: Legal Reference).

§ 87(2)(g)

Allegation (B) Force: At 224 Nagle Avenue in Manhattan, Detective Fabio Nunez used a chokehold against § 87(2)(b)

Allegation (C) Force: At 224 Nagle Avenue in Manhattan, Detective Fabio Nunez restricted § 87(2)(b) s breathing.

It is undisputed that § 87(2)(b) was arrested for § 87(2)(b) during this incident. During the arrest, Detective Nunez forced § 87(2)(b) to the ground.

In his statement to IAB, § 87(2)(b) alleged that Detective Nunez placed him in a chokehold and pushed him to the ground. He did not describe how long Detective Nunez held him in the chokehold and did not state whether the chokehold restricted his breathing. This action aggravated pre-existing injuries in § 87(2)(b) s neck, elbows and knees, causing him pain in these areas. He did not mention any other injuries.

Detective Nunez stated that he initiated § 87(2)(b) s arrest by grabbing his arms and chest and then pushing him to the ground. § 87(2)(b) landed face-down on the ground. He then punched and kicked Detective Nunez several times. Detective Nunez did not recall where these blows landed, but he denied that he suffered any injuries. Detective Nunez and several other officers whom he could not identify placed § 87(2)(b) s arms behind his back. He denied using any further physical force against § 87(2)(b). He denied that he placed § 87(2)(b) in a chokehold. He denied placing his arm across § 87(2)(b) s neck or otherwise making contact with § 87(2)(b) s neck.

A subclip from Sergeant Perez’s BWC footage is attached in IA #163 (Board Review #29: BWC Subclip). It shows Police Officer Isabelle pointing at § 87(2)(b) and stating, “He’s OGA.” Sergeant Perez then states, “Yo, cuff him up.” Detective Nunez is then seen standing behind § 87(2)(b). He is reaching over § 87(2)(b) s right shoulder using his right hand. He is

holding the front of § 87(2)(b)'s shirt. He then releases § 87(2)(b)'s shirt and places his right forearm against the front of § 87(2)(b)'s throat.

When this footage was shown to Detective Nunez, he stated that the video showed that he was holding the fabric of § 87(2)(b)'s shirt during the arrest. He denied that it showed him placing his arm across § 87(2)(b)'s throat.

Detective Nunez prepared a TRI report to document this incident (Board Review #04: TRI Report). In the section of the report documenting force that § 87(2)(b) used against officers, Detective Nunez indicated that § 87(2)(b) used “wrestling/grappling” and “pushing/shoving.” In the section of the report documenting force that he used against § 87(2)(b), Detective Nunez indicated that he used a “forcible take down.” In the section of the report documenting Detective Nunez’s reasons for using this force, he indicated “defense of self,” “defense of member of public,” “defense of other MOS” and “overcome resistance or aggression.”

NYPD Patrol Guide procedure 221-01 states that officers may use physical force when it is reasonable to place a person in custody. Any application or use of force must be reasonable under the circumstances. Officers are forbidden from using chokeholds, which are defined as the application of pressure to an individual’s throat or windpipe which may prevent or hinder breathing or reduce intake of air (Board Review #33: Legal Reference).

§ 87(2)(g)



Allegation (E) Discourtesy: At 224 Nagle Avenue in Manhattan, Police Officer Ismael Perez-Ortiz spoke discourteously to § 87(2)(b)

§ 87(2)(b) made no mention of any officers using profanity towards any civilians besides himself. None of the officers interviewed recalled either themselves or another officer using profanity during this incident.

A subclip from Police Officer Cumberbatch’s BWC footage is attached in IA #162 (Board Review #27: BWC Subclip). It shows Police Officer Cumberbatch and Police Officer Perez-Ortiz speaking to an unidentified civilian near the double-parked vehicle. A voice states, “Everybody’s emotions get high, fucking dumb shit like this happens.” The speaker is not visible.

When shown this BWC footage, Police Officer Perez-Ortiz identified the voice as his own. When asked why he used profanity while addressing the unidentified civilian, he stated that the civilian was agitated and upset and that his remark was intended to calm the civilian down. He used

profanity because the civilian had been using profanity. He felt that he would be able to better connect with the civilian if he used similar language.

An officer may use profanity towards a civilian while attempting to gain control of a “dynamic situation.” An officer may not use profanity when it is intended solely to insult or belittle a civilian. PD v. Pichardo, DAO-DCT Case #2015-15012 (Board Review #32: Legal Reference).

§ 87(2)(g)

§ 87(2)(g)

Allegation (F) Abuse of Authority: At 224 Nagle Avenue in Manhattan, Detective Fabio Nunez threatened to arrest § 87(2)(b)

§ 87(2)(b) stated in his complaint to IAB that his father had been incarcerated for seventeen years prior to this incident. He did not identify his father or state whether his father was present during the incident. § 87(2)(b) alleged that Detective Nunez told him that his father was on probation after his release from prison, and that he would ensure that his father was sent back to prison. § 87(2)(b) did not specify whether Detective Nunez made this threat during the incident or prior to it.

Detective Nunez stated that he was familiar with both § 87(2)(b) and § 87(2)(b)'s father prior to this incident because he had arrested both of them numerous times for drug-related offenses. Approximately three years prior to this incident, § 87(2)(b)'s father was released from prison on parole after serving an unspecified sentence. Upon his release, Detective Nunez warned § 87(2)(b) that since his father was on parole, his father would be sent back to prison if he had any run-ins with the police. Detective Nunez did not see § 87(2)(b)'s father during this incident. He denied discussing § 87(2)(b)'s father during this incident. He denied telling § 87(2)(b) that his father's parole would be revoked or that his father would be sent back to prison.

None of the other officers interviewed recalled hearing Detective Nunez threaten to have § 87(2)(b)'s father arrested for any reason.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Abuse of Authority: At the 34th Precinct stationhouse, an officer did not obtain medical treatment for § 87(2)(b)

Allegation (H) Discourtesy: At the 34th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged in his complaint to IAB that he had been involved in a vehicle collision at some point prior to this incident. As a result of the collision, he was suffering from pain in his elbows, knees and neck. After Detective Nunez arrested him, the pain from these injuries flared up. § 87(2)(b) asked an unidentified officer to take him to a hospital. The officer replied, “Cut the bullshit, you’re going to be here for the rest of the night.” § 87(2)(b) did not receive medical attention. He did not describe which officer he was speaking to, when this conversation took place, or where he was at the time of his request.

The investigation was unable to obtain a sworn statement from § 87(2)(b) (Board Review #34: Civilian Contact Attempts). § 87(2)(b) is not heard requesting medical attention in any of the BWC footage obtained from this incident (Board Review #05-24: BWC Footage).

None of the officers interviewed recalled § 87(2)(b) sustaining any injuries, complaining of injuries, or requesting medical attention. They denied that they refused medical attention to § 87(2)(b) or that they observed any officers deny him medical attention. None of the officers recalled themselves or any other officers using profanity towards § 87(2)(b)

No medical treatment of prisoner report was prepared for § 87(2)(b)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review #39: Civilian CCRB History).
- Police Officer Isabelle has been a member of the service for four years and this is the first CCRB complaint to which she has been a subject.
- Detective Nunez has been a member of the service for nineteen years and has been a subject in sixteen CCRB complaints and forty-four allegations, of which eighteen have been substantiated:
 - 200504839 involved a substantiated allegation of vehicle search. The Board recommended that he receive charges. The NYPD applied instructions.
 - 201805943 involved substantiated allegations of chokehold, restriction of breathing and physical force, as well as sixteen substantiated allegations of usage of a nonlethal restraining device (Taser). The Board recommended that he receive charges. The NYPD has not yet imposed discipline.
- Sergeant Perez has been a member of the service for twelve years and has been a subject in three previous CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)
- Police Officer Perez-Ortiz has been a member of the service for two years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- A Notice of Claim search request was submitted to the NYC Office of the Comptroller on June 10, 2019. The request will be included in the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date